

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
NORTHEASTERN DIVISION

02 DEC -6 PM 3: 28  
U.S. DISTRICT COURT  
N.D. OF ALABAMA

MICHAEL COLE WALLS, )  
 )  
 PLAINTIFF, )  
 )  
 VS. ) CV-02-2310-NE  
 )  
 THE KROGER COMPANY, )  
 )  
 DEFENDANT. )

*jm*

**ENTERED**  
DEC - 6 2002

MEMORANDUM OF DECISION

The court has before it the December 5, 2002 motion of defendant to dismiss, and brief in support thereof. The sole basis for the motion is the alleged failure of plaintiff to commence this action within ninety days after receiving his right to sue letter. Defendant correctly points out that the complaint, with its exhibits, shows on its face the following:

1. Plaintiff, through his attorney Rebekah Keith, filed his EEO charge of discrimination on April 17, 2001.
2. At the request of either Rebekah Keith or plaintiff, the EEOC issued the notice of right to sue, sending a copy thereof to Rebekah Keith and plaintiff, on February 28, 2002.
3. The notice of right to sue was received March 5, 2002 either by Rebekah Keith or plaintiff.

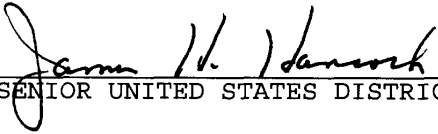
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4. The complaint herein was not filed until September 19, 2002, over six months after the notice of right to sue was mailed to Rebekah Keith and plaintiff and received by at least one of them.

It is well established that the notice of right to sue need only be received by either the plaintiff or her attorney. Irwin v. Department of Veterans Affairs, 498 U.S. 89, 92-93 (1990).

Plaintiff's complaint was filed well outside of the ninety-day time period and is due to be dismissed.

DONE this 6<sup>th</sup> day of December, 2002.

  
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SENIOR UNITED STATES DISTRICT JUDGE